CENTRAL LORRY SERVICE CO. SDN. BHD. v. THE AMERICAN INSURANCE CO.

[O.C.J. (Mohamed Azmi J.) November 5, 1980]
[Kuala Lumpur — Civil Suit No. 894 of 1974]

Insurance — Loss and damage to goods — Inland and Transport Clause policy — Interpretation — Contra proferentem rule.

The plaintiffs, carriers of goods, transported goods belonging to Nestle's Products (M) Ltd. in their lorry No. BAC 7779. On January 18, 1973 during the currency of the policy issued by the defendants to the plaintiffs to cover loss and damage to goods, an accident occurred to the said lorry while it was conveying the said goods from Kuala Lumpur to Muar. Near Malim in Malacca, the near side wooden flap suddenly gave way and some goods to the value of $14,451.01 were thrown out from the said lorry and subsequently stolen by person or persons unknown. The amount claimed was admitted by the defendants subject to liability. The only issue for determination was whether the circumstances under which the goods were lost and damaged were covered by the Inland and Transport Clause of the Policy.

Held: (1) in construing insurance policies the *contra proferentem* rule should apply if there was ambiguity or doubt as to the extent of the policy. Since the policy was prepared by the insurance company the doubt and ambiguity should be construed in favour of the insured, the plaintiffs in this case;

(2) the policy in this case covered all accidents to the vehicle and the two events described in the clause were mere examples and not exhaustive. The plaintiffs' claim was therefore covered by the Inland Transport Clause in the policy;

(3) it could not be said that the accident was reasonably foreseeable so as to take it out from the risk covered by the policy.

Case referred to:-

(1) *Golden Hope Rubber Estate Ltd.* v. *Muniammah & Ors.* [1965] 1 M.L.J. 5, 9.

The following case was also cited in argument: *Cheong Bee* v. *China Insurance Co. Ltd.* [1974] 1 M.L.J. 203.

HIGH COURT COMMERCIAL DIVISION.

V. Krishnan for the plaintiffs.

Wilfred Abraham for the defendants.

Mohamed Azmi J.: This is a claim for the sum of $14,451.01 under a policy of Insurance No. AM 201-20502 dated September 7, 1972.

On the facts, it is common ground that the plaintiff company was at all material times the carrier of goods owned by Nestle's Products (M) Ltd. and the goods were transported on the plaintiff's motor lorry No. BAC 7779. On January 18, 1973, during the currency of the policy issued by the defendant to the plaintiff to cover loss and damage to the goods, an accident occurred to motor lorry BAC 7779 while it was conveying Nestle's goods from Kuala Lumpur to Muar. Near Malim in Malacca, the near-side wooden flap suddenly gave way and some goods to the value of $14,451.01 were thrown out from the said lorry and subsequently stolen by person or persons unknown. The amount claimed is admitted by the defendant subject to liability.

The only issue for determination is whether the circumstances under which the goods were lost and damaged are covered by the Inland and Transport Clause of the policy. The defendant insurance company contends that the risk is not covered having regard to the clear and unequivocal words of the Inland Transport Clause.

The relevant part of the Inland Transport Clause provides:

"This Policy covers Loss of or Damage to the interest assured hereby whilst in ordinary or customary course of transit, occasioned by the carrying vehicle or conveyance being on fire, derailed, overturned or in collision, struck by lightning or other accident to the vehicle or conveyance such as involuntarily leaving the road, breakdown of bridges and consequent damage to the conveyance or vehicle and the interest assured hereby...." (See AB. 5).

It is accepted by both counsel that the plaintiff's claim, if at all payable, would come under the second limb of the clause, viz. for loss or damage occasioned by other accident to the vehicle such as involuntarily leaving the road and breakdown of bridges. Defence counsel also concedes that the sudden giving way of the wooden flap is an accident. This concession is justified having regard to the meaning of accident numerated in *Golden Hope Rubber Estate Ltd.* v. *Muniammah & Ors.*[1] and at page 847 of *MacGillivray & Parkington* on Insurance Law, 6th Edition. In my view, there is only doubt and ambiguity in the clause as to whether the policy covers any accident to the vehicle or is merely confined to accidents caused by the vehicle involuntarily leaving the road or by breakdown of bridges. In construing insurance policies, the *contra proferentem* rule should apply if there is ambiguity or doubt as to the extent of the policy. Since the policy is prepared by the insurance company, the doubt and ambiguity should be construed in favour of the insured, namely, the plaintiff in this case. In the event, I hold that the policy covers all accidents to the vehicle and that the two events described in the clause are mere examples and not exhaustive. The plaintiff's claim is, therefore, covered by the Inland Transport Clause in the policy.

Further, since the giving way of the wooden flap is admitted to be an accident, the occurrence is clearly not foreseeable. There is also the evidence of Mr. Mok Chi Mun (PW1), the plaintiff's clerk, and Mr. Gui Pek Chan (PW2), the lorry driver, that before leaving Kuala Lumpur, the goods were properly secured and covered by canvas and that there was no damage to the wooden flaps. The lorry was new and road-worthy. This evidence was not seriously challenged. In the event, it cannot be said that the accident is reasonably foreseeable so as to take it out from the risk covered by the policy. To my mind, the occurrence is similar to the vehicle involuntarily leaving the road which is expressly included in the policy.

I therefore enter judgment for the plaintiff for the sum of $14,451.01 and interest at 6% per annum from date of accident to date of realization. Since the claim is within the jurisdiction of the Sessions Court when it was fixed for hearing, I order costs to be taxed on the lower scale of the High Court costs.

Claim allowed.

Solicitors: *Mah-Kok & Din; Shearn, Delamore & Co.*